IN THE WASHINGTON STATE COURT OF APPEALS

DIVISION II

NO: 48950-3-II

STATE OF WASHINGTON

Respondent,

v.

THOMAS PLEASANT,

Appellant.

APPELLANT'S PRO SE
SUPPLEMENTAL BRIEF.

APPEAL OF LEWIS COUNTY SUPERIOR COURT
NO: 08-1-00600-4
HONORABLE JUDGE BROSEY.

Presented by
Thomas Pleasant

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STATEMENT OF FACTS.

On or about 10:44 pm. On July 16, 2008, it was alleged that an Unknown person entered a Subway Store in the city of Chehalis, where the Store clerk was ordered onto her knees on the floor, the unknown person cleaned out the cash register. The unknown person then forced the store clerk into a Locker/Freezer, where he bound and rapped her, while holding an alleged gun on her.

After the unknown person left the clerk was able to untie herself, and call the police.

The Police did a Rape kit, and took a description of the suspect. Who was described as "A White Male, in his late "30's -- 40's," with Black Hair, a Mustache, and wearing Black Shirt and jeans.. See Clerks Papers 1-10, Probale Cause, and Charging Information, Police Report.

On August 4, 2008, Appellant was arrested in Castle Rock, Washington, for an unrelated robbery in Cowlitz County. When the Police searched Appellant's vehicle they found a "Black Shirt," and a Black pair of pants, and a belt. And an Air Pistol (BB gun) that matched the description given in the robbery. See Clerks Papers. Probable Cause information.

Appellant, who had been Heavily abusing drugs since the beginning of June 2008, could not remember whether or not he had committed any robberies. And therefore,

confessed to any Robberies that the Prosecution brought up. Which included the Robbery from Chehalis.

The Lewis County prosecutor requested and was given a DNA sample by Appellant. And when he was told about the Robbery, he told the Prosecutor he had done the robbery but did not rap, assault, or touch the store clerk.

On September 9, 2008, the Lewis County prosecutor formally charged Appellant with Count II, Crime of Robbery in the First Degree, and count I Rape in the First Degree. Clerks papers 1-9. Lewis County also lodged a Warrant for Appellant's arrest once he was done in Cowlitz County.

Appellant remained in Cowlitz County jail, and was sentenced by the Cowlitz County Court, and on or about October 2008, Appellant was transferred to Walla Walla, Prison, located in Walla Walla, until mid 2015. When he was transferred to Stafford Creek correction center.

Appellant Motioned the Lewis County Court to clear up the Warrant starting in 2010. And it took until February 26, 2016, for the Lewis Court to issue the Order for Appellant. RP. 11-12.

Appellant meet with Counsel only once before the Court proceedings, and convinced Appellant that he needed to Plead Guilty and be done with it, since he had essentially confessed to the crime of Robbery.

At no time did Counsel investigate, inquire as to whether Appellant was actually guilty, nor did counsel

try to get a Plea Deal with the State. His Only Advise was Plead Guilty.

On March 22, 2016 Seven Plus years after the alleged crime, the State Amended the Information to include Assault in the Second Degree, and remove the Rape in the First Degree, for the DNA evidence exonerated Appellant of that Crime. See Clerks Papers 36-37.

On Counsels advise Appellant plead guilty as charged. Clerks Papers 40-50.

At sentencing the Judge let it slip out that the Evidence in the case had been Lost/destroyed by the Chehalis Police. RP. 5. And that the only evidence that remained was DNA evidence which exonerated Appellant of the Crimes charged. RP. 5, 6, 17.

It was mentioned at Trial that when Counsel was informed that the evidence had been lost, he simply stated that he did not know of that fact. RP 5. But it did not matter since Appellant was being sentenced to Life without parole. RP. 5. 17.

The Court sentenced Appellant to Life without the possibility of parole. And when Appellant Appealed the Decision the Trial Court refused Counsel. Clerks Papers 94-95. And this court during the appeal process, appointed Counsel, and this is now Appellant's Pro Se Supplemental Briefing in support of Counsels Appeal.

WAS DEFENDANT DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN COUNSEL FAILED TO: INVESTIGATE, RESEARCH, OR PROVIDE COMPETENT ADVISE IN VIOLATION OF THE SIXTH, ARTICLE 1 § 22 CONSTITUTIONAL PROVISIONS.?

Defendant states that he was Denied Effective Assistance of Counsel during his legal Process, for Counsel did not fully Advise, or Inform Defendant of the Law, the Consequences, nor did counsel investigate the charged crimes in which he advised Defendant to plead guilty to.

The Federal and Washington State Constitutions guarantee a defendant the right to effective assistance of counsel. U.S. Constitution Amend. 6; Constitutional Art. 1 § 22. A Defendant is denied this right and it entitled to reversal of his convictions when is attorney's conduct; (1) Falls below a minimum objective standard of reasonable attorney conduct; and (2) The defendant was prejudiced by the deficient performance. Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

When a Court reviews a claim of Ineffective Assistance of Counsel, it is done De Novo. State v. Sutherby, 165 Wn.2d 870, 883, 204 P.3d 916 (2009). To prevail on the claim of ineffective assistance of counsel, the Appellant must show (1) That there was Deficient Performance, and (2) That the deficient performance prejudiced the defendant. State v. Grier, 171 Wn.2d 17,

32-33, 246 P.3d 1260 (2011). State v. Cross, 156 Wn.2d 580, 605, 132 P.3d 80 (2006). The issue of ineffective assistance of counsel can be raised for the First Time on Appeal. State v. Halley, 75 Wn.App. 191, 196-97, 876 P.2d 973 (1994).

COUNSELS DUTY TO TEST THE ADVERSARY PROCESS.

"Counsel has a Duty to bring to bear such skills and knowledge as will render the trial a reliable "ADVERSARY" testing process." Strickland, 466 U.S. at 688. Hinton v. Alabama, 134 S.Ct. 1081, 1083, 1089 (2014); Teviono v. Texas, 133 S.Ct. 1911 (2013). "Failure of counsel to investigate, and know the laws in effect is Deficient performance, and requires reversal."

Counsel in this case did not Question the State's Evidence by;

1. That Defendant was Actually Innocent of the crime charged of Robbery in the First Degree.

2. In this case the Victim testified that Defendant, First Robbed Her, then Rapped Her. RP. 12-25.

3. DNA Evidence EXONERATED Defendant as the Perpetrator of the Crime. RP. 5, lines 20-24, 8, line 18-25, 17,

4. Counsel failed to Question the Evidence was it was Destroyed and did not have any knowledge of the Destruction.

5. "The Chehalis Police Department Destroyed the Evidence." RP. 6 line 1-2. Counsel. "Well, and I don't

know about that. But we know that there was a kit sent, it was evaluated, and my client's DNA was not included in any samples that were taken."

The facts are plain, and simple, Counsel did not bring any Skills, Diligence, or Knowledge Herein, Counsel did not make himself familiar with the Fact that the Prosecutor had LOST the evidence to the case. RP. 6, line 1-9, 17, line 9-13. Had DNA Evidence which exonerated the defendant, and then had Defendant plead guilty to Robbery in the First Degree, which could not have happend as the witness/victim testified that defendant did. RP. 12. Further, Counsel had defendant plead guilty to the crime of Assault in the Second degree that was not charged until 7 years after the original charging information. See Clerks Papers, Amended Charging Information.

With the Statements of the Victim, Defendant was/should have been proven innocent by the victims own statement that it was Defendant who robbed her, beat, attacked her, and then rapped her. RP. 12.

The facts of this case prove that Counsel was so ineffective, that he was prejudiced into pleading guilty to crimes he did not commit, and that the true person who committed the crime went free, and an Innocent person to the crime is incarcerated for a Crime he did not commit. Which was PREJUDICIAL to Defendant for he was advised to plead guilty to crimes in which he was actually

innocent, but due to the drug-induced statements that he committed the robbery, he was guilty. "It is Counsels duty to be fully informed on the Facts, and the Law." A.B.A. Defense Function Standard 4-5. State v. Kyllo, 166 Wn.2d 856, 865-69, 215 P.3d 177 (2009) "Fauilure of counsel to research relevant law and revering where counsel did failed to be informed."

The duty to prove effective assistance of counsel includes the duty to "research" and apply "relevant statutes." In Re Pers. Restraint Tsai, 183 Wn.2d 91, 102, 351 P.3d 138 (2015). Herein, Counsel "Failed to Follow "Statutory Time Limitations." And that there was a THREE (3) Year Time limitations to file Count II, Assault in the Second Degree. Clerks Paper Amended Information. The allowing his Client to plead guilty to the Crime of Assault in the Second Degree 7 plus years after the original Charging.

Defendant states, and it shows in the record that his Counsel was so ineffective that it cost him his life, given the facts of this case, and the abuse Counsel committed to ensure that the Prosecution achieved a conviction for a crime that they did not want to pursue.

In this case the Judge said it best at RP. 17. "I assume Mr. Blair has gone over that with you thoroughly. HE IS AN EXPERIENCED ATTORNEY WHO USED TO BE A PROSECUTOR." Lines 19-22. And still is by his actions herein.

In Hinton v. Alabama, the United States Supreme Court stated that Counsel was to do more than merely showing up for the hearing, his/her duty is to challenge the Prosecutions case. Hinton, 134 S.Ct. at 1089. And herein, it can not be "Trial Court Strategy" when counsel failed in every aspect to be familiar with the law, or to know what the evidence was, and make the best choice for his client."

DID THE TRIAL COURT ERR WHEN IT ALLOWED THE STATE TO CHARGE DEFENDANT WITH ASSAULT IN THE SECOND DEGREE SEVEN YEARS AFTER THE ORIGINAL CHARGING IN VIOLATION OF ARTICLE 1 § 22 OF THE CONSTITUTION WHEN THE STATUTE OF LIMITATIONS HAD ALREADY RUN OUT FOR CHARGING.?

Defendant states that the State, Court, Erred when it charged Assault in the Second Degree in Count II, Nine (9) Years after the Original Charging Information was charged. See Clerks Papers Amended Charging Information.

Under the Washington State Constitution, a defendant has the right to a fair and impartial proceeding under Article 1 § 22. And this is violated when the State/Court charged defendant with a crime that had EXPIRED.

Under RCW 9A.04.080, the State was required to file the Assault Charges within the Statute of Limitations of 3 Years. State v. Peltier, 181 Wn.2d 290, 332 P.3d 457 (2014).

The prefiling expiration of a statute of limitations for a crime affects the authority of the court to enter a judgment and sentence. In Re Pers. Restraint of Stoudmire, 141 Wn.2d 342, 354, 5 P.3d 1240 (2000).

In this Case, the State charged Assault in the Second degree on March 22, 2016. Clerks Papers 36-37. Charging Amended Information Count II. The Crime was Allegedly Committed on 7-16-2008. Almost 10 years Prior to the Filing of the Amended Information and Count II of Assault in the Second Degree.

Once the statute of limitations has expired for a crime, the State lacks the authority to charge a defendant and the trial court lacks the authority to sentence a defendant under a plea agreement based upon untimely charges. State v. Peltier, 181 Wn.2d at 298.

Herein, the State did not charge Defendant for the crime of Assault in the Second Degree until Seven Years after the original Charging Information was filed on September 9, 2008. "The Statute of limitations is an Absolute Bar to prosecution once it has expired in a criminal case." State v. Glover, 25 Wn.App. 58, 61, 604 P.2d 1015 (1979); State v. Fischer, 40 Wn.App. 506, 510, 699 P.2d 249 (1985); State v. Walker, 153 Wn.App. 701, 705, 224 P.3d 814 (2009).

Herein, this Court must reverse the conviction of Assault in the Second degree for it was barred by the

Statute of limitations of RCW 9A.04.080.

CONCLUSION.

Appellant states that this Court should Vacate the Robbery in the First Degree Conviction and Order a New proceedings in which Appellant has Competent Counsel. And In Count II, Assault in the Second Degree, Vacate with Prejudice based upon the Statute of Limitations 3 year Time Limit of Absolute Bar.

Respectfully Submitted.

Dated this 1ST day of March, 2018

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	:	AFFIDAVIT OF SERVICE
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Appellant.	:	

Comes now the Appellant Thomas Pleasant, and swears under the penalty of perjury that I placed in the Correctional mail system the following;

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Dated this 1ST day of March, 2018

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